

**House Energy and Technology Committee Meeting**  
**HB 4247: Video Franchise Dispute Resolution Process**

February 17, 2009

9:00 AM

**1. Brief Overview of 2006 PA 480**

- Became effective on January 1, 2007
- Goal – to promote competition in providing video services in Michigan
- Michigan Public Service Commission (Commission) has been charged with the implementation and enforcement of the Act
- Some of the Commission's responsibilities include (but not limited to):
  - i. Establishing a uniform standardized franchise agreement
  - ii. Assisting and reviewing unresolved disputes among customers, providers, and franchise entities
  - iii. Filing an annual competition report by February 1 of each year with the Governor and Legislature

**2. Brief Overview Complaint Process**

- Section 10 (3) of 2006 PA 480 states: "The commission shall submit to the legislature no later than June 1, 2007 a proposed process to be added to this act that would allow the commission to review disputes which are not resolved under subsection (2), disputes between a provider and a franchise entity, and disputes between providers."
- The Commission issued an order (U-15168) on January 9, 2007, seeking public comment on how to fulfill its responsibilities under Section 10 (3).
  - i. Based on the comments received from providers, communities, and organizations representing communities, as well as the Commission's own experience, the Commission submitted its proposed process
  - ii. The proposed process incorporates language from the Michigan Telecommunications Act and Metropolitan Extension Telecommunications Rights-of-Way Oversight Act, as well as the Commission's own complaint experience with other utilities, and public feedback.
- May 31, 2007 – Commission submitted its proposed dispute resolution process
  - i. Informal and Formal Process for both customer vs. provider complaints, and provider vs. provider or provider vs. franchise entity complaints
  - ii. HB 5048 was introduced on July 24, 2007 (identical SB 637)
  - iii. SB 637 was introduced on July 17, 2007
  - iv. No action was taken on these bills
- February 4, 2009 – SB 190 was introduced.
- February 11, 2009 – HB 4247 was introduced
  - i. Identical to the previous bills



Jennifer M. Granholm  
GOVERNOR

STATE OF MICHIGAN  
PUBLIC SERVICE COMMISSION  
DEPARTMENT OF LABOR & ECONOMIC GROWTH  
KEITH W. COOLEY  
DIRECTOR

J. Peter Lark  
CHAIRMAN

Laura Chappelle  
COMMISSIONER

Monica Martinez  
COMMISSIONER

May 31, 2007

Honorable Jennifer M. Granholm  
Governor of Michigan

Honorable Members of the Senate

Honorable Members of the House of Representatives

The enclosed proposed dispute resolution process is being submitted on behalf of the Michigan Public Service Commission in accordance with Section 10(3) of the Uniform Video Services Local Franchise Agreement Act of 2006. The report will be made available on the Commission's website at [www.michigan.gov/mpsc](http://www.michigan.gov/mpsc).

The purpose of this report is to provide a proposed process for the Michigan Public Service Commission when reviewing and resolving video franchising disputes that were not already resolved between the provider and the customer, as well as unresolved disputes between providers, and also providers and franchise entities.

With respect to customer complaints against video providers, the Commission notes that the substantive protections conferred by existing law are set forth in Section 10(1) of the Video Act, MCL 484.3310(1). The following are prohibited:

- (a) false, misleading, or deceptive representations or material omissions regarding the rates, terms, or conditions of service;
- (b) cramming;
- (c) imposing charges for canceled services;
- (d) confusing or misleading practices that cause misunderstandings of legal rights, obligations, or remedies;
- (e) representing or implying the performance of services promptly or within a specified time, with knowledge or reason to know that the deadline will not be met;
- (f) sales presentations that cause coercion or duress.

Because Section 10(1) is explicit, yet limited in scope, it is doubtful whether the Commission would be able to provide substantive redress for any complaint that does not specifically allege prohibited forms of conduct. For example, the ability to provide meaningful or satisfactory solutions for common billing matters, service quality or outages, or delay in

May 31, 2007

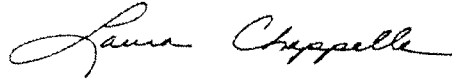
Page 2

repairs, would be in doubt, and customers may become frustrated if they perceive that there is no legal remedy for legitimate grievances.

Very truly yours,

A handwritten signature in black ink, appearing to read "J. Peter Lark".

J. Peter Lark, Chairman  
Michigan Public Service Commission

A handwritten signature in black ink, appearing to read "Laura Chappelle".

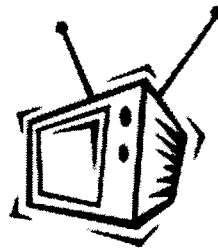
Laura Chappelle, Commissioner  
Michigan Public Service Commission

A handwritten signature in black ink, appearing to read "Monica Martinez".

Monica Martinez, Commissioner  
Michigan Public Service Commission

# Uniform Video Service Local Franchise:

## Michigan Public Service Commission's Proposed Dispute Resolution Process



May, 2007

## **Introduction**

On December 21, 2006, Governor Jennifer M. Granholm signed into law the Uniform Video Services Local Franchise Act, 2006 PA 480, MCL 484.3301 *et seq.* (the Video Act). Section 10 (3) of the Video Act provides:

The commission shall submit to the legislature no later than June 1, 2007, a proposed process to be added to this act that would allow the commission to review disputes which are not resolved under subsection (2), disputes between a provider and a franchising entity, and disputes between providers.

In order to develop a process that would allow the Commission to review and address disputes that are not resolved under subsection (2) of Section 10 of the Video Act; as well as disputes between providers and providers and franchising entities, the Commission issued an order on January 9, 2007 in Case No. U-15168. The Commission's order sought public comment and suggestions regarding the proposed process referenced in Section 10 (3) of the Video Act. Interested parties were directed to file their comments and/or suggestions by February 8, 2007. Responses to those comments and/or suggestions were to be filed no later than March 1, 2007.

The Commission received comments from both providers, as well as representatives of the local franchising community. Taking into consideration the comments and suggestions that were received, as well as existing dispute processes, the Commission has developed the following proposed processes for reviewing and resolving disputes pursuant to the Video Act. In order to best serve the different parties of potential disputes that might arise, the Commission has set a distinct process for disputes involving customers. In addition, the Commission has based the proposed processes for all parties, in part, on current processes that have demonstrated effectiveness. Section 14 of the Video Act empowers the Commission to order remedies and penalties if, after notice and hearing, the commission finds that a person has violated the act. The proposed processes are designed to work in concert and allow the Commission to faithfully, fairly, and equitably administer the provisions of the law.

## **Customer v. Provider Dispute Resolution Process**

Section 10 (2) of the Video Act provides:

Each video service provider shall establish a dispute resolution process for its customers. Each provider shall maintain a local or toll-free telephone number for customer service contact.

The Commission did not receive comments specifically from individual customers or consumer groups. However, the Commission received comments from representatives of local franchise communities, local area cable commissions, as well as groups/associations all of which represent cable customers and citizens. The Commission uses its long-standing experience of assisting customers of energy and telecommunications providers as guidance for the customer versus

provider dispute resolution process. The Commission proposes a multi-staged approach in order to resolve disputes with expediency and yet enable a customer the opportunity to seek redress as needed. The following steps, based similarly on current processes for other energy and telecommunications issues, are proposed to address disputes between a customer and a video service provider:

***Stage 1 (Provider Dispute Resolution):*** As required by the Video Act, each provider shall maintain a local or toll-free telephone number for customer service contact. This number should be visibly identified and placed on the customer's bill. In addition, as required by the Video Act, each provider shall establish a dispute resolution process for its customers AND each provider shall notify its customers of the dispute resolution process. In order to comply with this, providers should ensure that the dispute resolution process is provided at least annually to each customer. In addition, the provider should place the dispute resolution process on its website in a manner that is reasonably easy to locate.

The customer should first attempt to contact the video service provider to resolve the dispute. If a customer is dissatisfied with the provider's resolution, the provider should direct the customer to the Commission, providing the Commission's toll-free customer service number and the web address.

***Stage 2 (Informal Complaints):*** If the customer remains dissatisfied with the Stage 1 dispute resolution or if no resolution has been reached regarding the complaint/inquiry, the customer may submit an *informal* complaint to the Commission and the following process for an informal complaint would take place:

1. A customer contacts the Commission with an informal cable/video complaint.
2. A Commission staff member is assigned to the informal complaint.
3. The Commission staff member forwards the complaint to the provider and informally mediates (if necessary) between the provider and the customer.
4. Upon receiving the complaint from the Commission, the provider is allowed up to 10 business days (under normal circumstances) to respond and provide a detailed resolution to both the customer and the Commission. Within the first 1-3 business days, the provider will make an initial contact with the customer, making them aware that they have received the complaint and are working to resolve it.
5. Upon receiving and reviewing the provider's response, if the Commission finds the customer's complaint has been adequately resolved, the Commission will then close the complaint. However, the Commission has the option to leave the complaint open so that it may follow-up with the provider and/or the customer if questions subsequently arise.

***Stage 3 (Formal Complaints):*** A customer will be permitted to file a formal complaint *only*: 1) when the informal complaint process has been completed and; 2) a satisfactory resolution has not been reached between the provider and the customer.

All formal complaints must be found *prima facie* before they may proceed. In order to be found *prima facie* the complaint must identify the specific section(s) of the Video Act that are alleged to have been violated and state sufficient facts to support the alleged violation(s). The complaint must also state with specificity the relief requested. If a complaint is not found *prima facie*, it will not be accepted.

The formal complaint process will utilize a combination of the procedures provided for in Section 7 of the Metropolitan Extension Telecommunications Rights-of-Way Oversight Act (METRO Act), MCL 484.3107, and Section 203 of the Michigan Telecommunications Act (MTA), MCL 484.2203. The following process for a formal complaint would take place:

1. A customer would submit their formal complaint, in writing, to the Commission. [Note: Section 203(7) of the MTA requires that the complaint contain all information, testimony, exhibits, or other documents and information within the person's possession on which the person intends to rely to support the complaint.]
2. The Commission staff will review the formal complaint, and if found *prima facie*, it will then proceed according to procedures outlined in Section 7 of the METRO Act if the complaint involves a dispute of \$5,000.00 or less.
3. The Commission will appoint a mediator within 7 business days of the date of the complaint to make recommendations within 30 days from the date of the appointment for a resolution of the dispute. If any of the parties are unwilling to comply with the mediator's recommendations, any party to the dispute may within 10 days of the date of the mediator's recommendation request a contested case pursuant to the provisions of Sections 203(1), (7), (8), (9), (10), (11), (12), (15) and (16) of the MTA.
4. If the complaint involves a dispute of more than \$5,000.00 the Commission will conduct a contested case pursuant to the provisions of Section 203(1), (7), (8), (9), (10), (11), (12), (13), (15) and (16) of the MTA. This scenario allows for no formal mediation.

#### **Provider v. Franchising Entity or Provider v. Provider Dispute Resolution Process**

The Commission notes that it has received three requests for declaratory rulings from a provider against a franchising entity. In all three instances, staff worked to assist with resolution of the matters. In one instance, the Commission treated the matter as a complaint and declaratory ruling, setting the matter for pre-hearing conference on an expedited basis. Fortunately, all three matters have been resolved without further administrative proceedings.

The Commission provides the following processes for resolving disputes between providers and disputes between a provider and a franchising entity.

**Stage 1 (Informal Complaint):** If a provider or franchising entity believes that a violation of the Video Act or the Agreement has occurred, they may begin an informal complaint process with the Commission. The franchising entity(ies) or the provider(s) must file with the Commission a written **Notice of Dispute** identifying the nature of the dispute, request an informal dispute resolution and serve the **Notice of Dispute** on the other party(ies). Commission staff will conduct an informal mediation in order to resolve the dispute. If a satisfactory resolution to the dispute has not been achieved, any party may file a formal complaint pursuant to the provisions of Sections 203 and 203a of the MTA.

**Stage 2 (Formal Complaint):** A provider or a franchising entity may file a formal complaint **only** when the informal complaint process has been completed, and no satisfactory resolution has been reached.

All formal complaints must be found *prima facie* before they may proceed. In order to be found *prima facie* the complaint must identify the specific section(s) of the Video Act and/or the Uniform Video Service Local Franchise Agreement that are alleged to have been violated and state sufficient facts to support the alleged violation(s). The complaint must also state with specificity the relief requested. If a complaint is not found *prima facie*, it will not be accepted.

The following process for a formal complaint will take place:

1. A provider's or franchising entity's attorney would submit a formal complaint in writing to the Commission. [Note: Section 203(7) of the MTA requires that the complaint contain all information, testimony, exhibits, or other documents and information within the person's possession on which the person intends to rely to support the complaint.]
2. The formal complaint would proceed pursuant to the provisions of Sections 203(1), (7), (8), (9), (10), (11), (12), (13), (15) and (16) and 203a of the MTA.
3. For all complaints, for a period of 60 days after the complaint is filed, the parties shall attempt alternative means of resolving the complaint.
4. Any alternative means that will result in a recommended settlement may be used that is agreed to by the principal parties of record. If the parties cannot agree on an alternative means within 10 days after the date the complaint is filed, the Commission shall order mediation. Within the 60-day period, a recommended settlement shall be made to the parties.
5. Within 7 days after the date of the recommended settlement, each party shall file with the Commission a written acceptance or rejection of the recommended settlement. If the parties accept the recommendation, then the recommendation shall become the final order in the contested case under Section 203.
6. If a party rejects or fails to respond within 7 days to the recommended settlement, then the complaint shall proceed to a contested case hearing under Sections 203(1), (7), (8), (9), (10), (11), (12), (13), (15) and (16).



7. The party that rejects the recommended settlement shall pay the opposing party's actual costs of proceeding to a contested case hearing, including attorney fees, unless the final order of the Commission is more favorable to the rejecting party than the recommended settlement. A final order is considered more favorable if it differs by 10% or more from the recommended settlement in favor of the rejecting party.
8. If the recommendation is not accepted, the individual commissioners shall not be informed of the recommended settlement until they have issued their final order under Section 203.
9. An attempt to resolve a contested case in this manner is exempt from the requirements of Section 203 and the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.201 to 24.328.



Jennifer M. Granholm  
GOVERNOR

STATE OF MICHIGAN  
PUBLIC SERVICE COMMISSION  
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH  
STANLEY "SKIP" PRUSS  
DIRECTOR

Orjiakor N. Isiogu  
CHAIRMAN

Monica Martinez  
COMMISSIONER

Steven A. Transeth  
COMMISSIONER

January 30, 2009

Honorable Jennifer Granholm  
Governor of Michigan

Honorable Members of the Senate  
Secretary of the Senate

Honorable Members of the House of Representatives  
Clerk of the House of Representatives

The enclosed annual report, *Status of Competition for Video Services in Michigan*, is submitted on behalf of the Michigan Public Service Commission in accordance with Section 12(2) of the Uniform Video Services Local Franchise Act (2006 PA 480). This report will be made available on the Commission's Web site at [www.michigan.gov/mpsc](http://www.michigan.gov/mpsc). The purpose of this report is to describe the status of competition in video services in Michigan. This report also includes information on activities of the Commission throughout 2008, responses from franchise entities and video/cable service providers, legislative amendments left pending in 2008, relevant issues at the Federal Communications Commission, as well as the Commission's recommendations.

Similar to the previous year's report, while the responses from both the franchise entities and providers indicate that there is not yet an overwhelming amount of video service competition occurring throughout Michigan at this time, there continues to be encouraging signs that competition is growing. Overall, providers are reporting a slight increase in competition in their franchise areas, as well as some communities reporting an increase of video/cable choice for their residents. It is important to understand and reiterate that video/cable competition and the entrance of new providers will not occur immediately. However, information that has been provided in this report presents positive signs that competition is continuing to develop in communities throughout Michigan. As stated in the previous year's report, it should be noted that the Video Franchise Act, and therefore this annual report, does not include information on satellite providers, which may be viewed as another competitor in video service.

The Commission provides recommendations for legislative revisions pursuant to Section 12(2) of 2006 PA 480. These recommendations if implemented will not only provide for better clarification, but will also improve the Commission's ability to more effectively implement 2006 PA 480.

January 30, 2009  
Page 2

The Commission will continue to monitor the status of video services competition in Michigan, which includes receiving and analyzing information from both franchise entities and video/cable service providers throughout Michigan. The Commission will also continue to assist individual customers, franchise entities, and providers with their questions and/or complaints. Finally, the Commission will continue to inform the Governor and Legislature of any future developments and make the appropriate recommendations for needed legislation.

Very truly yours,



Orjiakor N. Isiogu, Chairman  
Michigan Public Service Commission



Monica Martinez, Commissioner  
Michigan Public Service Commission



Steven A. Transeth, Commissioner  
Michigan Public Service Commission

# **STATUS OF COMPETITION FOR VIDEO SERVICES IN MICHIGAN**

**January 30, 2009**

**Orjiakor N. Isiogu, Chairman  
Monica Martinez, Commissioner  
Steven A. Transeth, Commissioner**

**MICHIGAN PUBLIC SERVICE COMMISSION**

Department of Energy, Labor & Economic Growth  
In compliance with Public Act 480 of 2006

# Table of Contents

	Page
Introduction .....	1
I. Responsibilities and Activities of the Commission .....	2
A. Statutory Responsibilities .....	2
B. Outreach.....	3
C. Complaint/Inquiry Handling .....	5
1. Dispute Resolution Process.....	5
2. Customer Complaints .....	6
3. Formal Complaints.....	9
II. 2008 Commission Survey to Franchise Entities and Providers .....	10
A. Franchise Entities Responses to the Commission Survey .....	11
1. Provider Information.....	11
2. Complaints .....	12
3. Impact of the Video Franchise Act on Communities .....	13
4. Changes in Quality of Service and/or Service Offerings of Providers .....	14
5. Franchise Entities Suggestions for Legislative Changes to the Act .....	15
B. Providers' Responses to the Commission Survey .....	16
III. FCC – Digital Television (DTV) Transition .....	19
IV. 2008 Activity for Legislative Amendments .....	21
V. Conclusion .....	21
VI. Recommendations .....	22

## **Introduction**

On January 1, 2007, the Uniform Video Services Local Franchise Act (2006 PA 480) became effective. For purposes of this report, 2006 PA 480 will be referred to as the “Act.”

Section 12(2) of the Act states:

The commission shall file a report with the governor and legislature by February 1 of each year that shall include information on the status of competition for video services in this state and recommendations for any needed legislation. A video service provider shall submit to the commission any information requested by the commission necessary for the preparation of the annual report required under this subsection. The obligation of a video service provider under this subsection is limited to the submission of information generated or gathered in the normal course of business.

This Act directs the Michigan Public Service Commission (Commission) to provide information regarding the status of competition for video services in Michigan, as well as any recommendations for needed legislation to the Governor and Legislature, by February 1 of each year. For the second year, the Commission gathered information regarding the status of competition for video services by mailing a survey to video service providers, as well as establishing an electronic survey that was used by municipalities throughout Michigan. The surveys, as well as the information collected from those surveys, are explained in further detail within the body of this report.

In addition to the survey information, this report provides a brief description of the Commission’s role as it pertains to the Act, as well as the video franchise activities (including complaint handling) of the Commission over this past year. This report includes a summary of legislative activity during 2008 in the video service area, the Commission’s conclusion on the status of video competition for 2008, and lastly, recommendations for legislative changes.

## **I. Responsibilities and Activities of the Commission**

This section provides an overview and analysis of the responsibilities and activities of the Commission since the Act became effective, and more specifically, over the course of this past year. These responsibilities and activities have been divided into the following categories: Statutory Responsibilities, Outreach, and Complaint Handling.

### **A. Statutory Responsibilities**

The Act became effective on January 1, 2007. The Commission was directed to establish a statewide uniform standardized form to be used by both video/cable service providers (providers) and franchise entities. Section 2(1) of the Act states:

No later than 30 days from the effective date of this act, the commission shall issue an order establishing the standardized form for the uniform video service local franchise agreement to be used by each franchising entity in this state.

The Commission developed the Uniform Video Service Local Franchise Agreement (UVSLFA) which was formally approved on January 30, 2007 by the Commission in Order U-15169. For purposes of this report, the UVSLFA will be referred to as the “Agreement.” After the Commission approved the Agreement, it was posted electronically to the Video Franchise Web page of the Commission’s Web site.<sup>1</sup>

The Act also required the Commission to develop a proposed dispute resolution process which was submitted to the Legislature before the June 1, 2007 deadline in compliance with Section 10(3) of the Act.

The Commission developed the Proposed Dispute Resolution Process which addresses complaints that may arise between a provider and a customer, a provider and a franchise entity,

---

<sup>1</sup> The Agreement, as well as the Act, can be located at: <http://www.michigan.gov/mpsc/0,1607,7-159-49641---,00.html>.

and lastly, a complaint between two providers after receiving comments, suggestions, and responses from providers and the public. The Commission also incorporated its own experience and knowledge with handling other utility complaints in developing this process. This proposed process is located on the Video Franchise Web page of the Commission's Web site.<sup>2</sup> The Commission submitted the Proposed Dispute Resolution Process to the Legislature and Governor on May 31, 2007. Since that time, the Legislature introduced two bills<sup>3</sup> to amend the Act to incorporate this process. However, the Legislature did not act on these bills in 2008.

In addition to the statutory requirements which have already been listed, the Act provides that the Commission shall receive and rule on waiver requests from providers for an extension to the requirements as stated in Section 9 of the Act; receive annual reports from providers describing their progress (as required in Section 9); and lastly, the Commission is given the authority to order remedies and penalties if it finds a violation of the Act.

## **B. Outreach**

The Commission has continued to work diligently to educate and raise awareness of the Act and the Agreement among providers, franchise entities, organizations, and the public.

Commission Staff has actively participated in speaking events<sup>4</sup> that provide an opportunity to educate and inform interested parties. Furthermore, the Commission has also reached out to interested parties through its Consumer Forums,<sup>5</sup> that were held during the month of October in cities throughout Michigan. Staff will continue to engage in these types of speaking events in

---

<sup>2</sup> The web page is located at: [http://www.michigan.gov/mpsc/0,1607,7-159-16372\\_44800---,00.html](http://www.michigan.gov/mpsc/0,1607,7-159-16372_44800---,00.html).

<sup>3</sup> SB 637 – introduced on July 17, 2007; and HB 5048 – introduced on July 24, 2007

<sup>4</sup> April 11, 2008, Staff spoke to the Michigan Association of Township Supervisors. In addition, Staff also presented at the Fall Conference of the Central States Regional Alliance for Community Media on October 17, 2008.

<sup>5</sup> In October, 2008 the Commissioners and Staff attended Consumer Forums in Detroit, Escanaba, Ann Arbor, Pontiac, Midland, Cadillac, and Benton Harbor. The Act and the Digital TV transition were among some of the many topics that were discussed at these forums.



order to not only assist interested parties, but also to obtain a better understanding of the video/cable franchise questions and concerns that exist with franchise entities and providers throughout Michigan.

The Commission has been providing assistance and information in regard to the Federal Communications Commission's (FCC) Digital Television (DTV) transition which is quickly approaching on February 17, 2009. In early February 2008, the Commission issued a press release encouraging television viewers to prepare themselves for the digital transition which will take place on February 17, 2009. The Commission also has a DTV.gov link posted on its Web site<sup>6</sup> to direct citizens to the FCC's DTV transition Web page. The Commission highlighted the DTV transition in its October Consumer Forums. Commission Staff has been assisting citizens on an individual basis, to ensure their DTV concerns are addressed and resolved.

Lastly, in order to improve the efficiency and effectiveness of the video franchise Web page, the Commission redesigned its Web page. On June 13, 2008 the Commission launched the redesigned Web site that is easier for users to navigate and provides both state and federal information, information regarding PA 480, DTV information, the Uniform Video Service Local Franchise Agreement and complaint information, in addition to other essential information. The "Video/Cable" Web page is located on the Commission Web site (*see* Fn 2). This Web page includes vital information that is relevant to all parties (individual customers, franchise entities, and providers). A "spotlight" section is included on the Web page, which highlights important recent video/cable events and/or news. The Web page provides users with the Commission's contact information<sup>7</sup> that can be used if users have inquiries or complaints. The Commission issued a press release on June 13 announcing the redesigned Web page. On June 18, Staff

---

<sup>6</sup> MPSC - Video / Cable

mailed letters to over 1,700 communities throughout Michigan, informing them of this redesigned Web page and also provided the Commission's video/cable contact information.

### **C. Complaint/Inquiry Handling**

The Commission has received hundreds of video/cable complaints for the second year in a row. The Commission has continued to receive video/cable complaints from customers, providers, and franchise entities, despite the fact that the Legislature has not yet acted on the requests to approve the dispute resolution process. As the number of complaints increase, it is crucial that the Legislature take action to formally adopt the dispute resolution process.

#### **1. Dispute Resolution Process**

As mentioned earlier, pursuant to the Act, the Commission developed a proposed dispute resolution process that was submitted to the Legislature on May 31, 2007. Both the House of Representatives and the Senate introduced legislation in response to the Commission's proposed dispute resolution process. On July 17, 2007, SB 637 was introduced and referred to the Senate Committee on Energy Policy and Public Utilities. On July 24, 2007, HB 5048 was introduced and referred to the House Committee on Energy and Technology.

Bill No.	Introduced	Status at 12/31/08
SB 637	July 17, 2007	Pending
HB 5048	July 24, 2007	Pending

HB 5048 was then referred to a second reading on February 20, 2008. SB 637 and HB 5048 are identical to one another. Outside of the dates that were already mentioned, no other action was taken by the Legislature in 2008 to address and approve the video franchise dispute resolution

---

<sup>7</sup> Currently, users can contact the Commission's video/cable Staff by utilizing the Commission's video/cable

process. Action by the Legislature on this matter is vitally important to ensure the success of the Act.

The goal of the Act is to increase video/cable competition throughout Michigan. However, if complaints between customers, providers, and franchise entities are not resolved, it will hinder video/cable competition, negatively impact franchise entities and providers, and potentially decrease customer service and quality of service.

## **2. Customer Complaints**

The number of customer complaints has increased significantly over the past year. The Commission continues to assist cable customers on a variety of issues regarding billing problems, service outages, customer service, missed appointments, delayed service, rates/fees, channel line-up concerns, video/cable competition, equipment/cable line problems, Public, Education, and Government (PEG) programming complaints, DTV inquiries, etc. The Commission continues to follow the general customer complaint process that is set forth in the Commission's proposed dispute process, as well as that of SB 637 and HB 5048. When a video/cable complaint is received, the complaint information is obtained and then submitted to the provider for investigation and response. The provider has 10 business days to investigate and provide a resolution. In circumstances where an immediate danger or harm may exist, the Commission requests that the provider expedite the complaint. For the most part, the majority of providers have been cooperating and complying with the 10-business day process; however, the Commission has encountered some difficulties from a small number of providers who do not adhere fully to the 10 business day process. At times, the Commission has encountered difficulties requiring the provider(s) to cooperate and comply with the 10 business day process

---

specific toll-free number (866-552-7725), fax (517-241-2400), mail, or walk-in to the Commission office.

since no “formal” process has been adopted and approved the by Legislature. Complaint handling problems that have been encountered with providers could easily be resolved by having a dispute resolution process that has been approved by the Legislature and included in the Act. In the meantime, the Commission continues to work directly with these providers to ensure that customer complaints are being fully investigated and resolved in a timely manner.

The Commission received 1,030 customer complaints in the video franchise area from January 1, 2008 to December 31, 2008. As a result, the Commission received a net increase of 415 complaints when compared to the previous year. Figure 1 below shows the increase in complaints between 2007 and 2008:

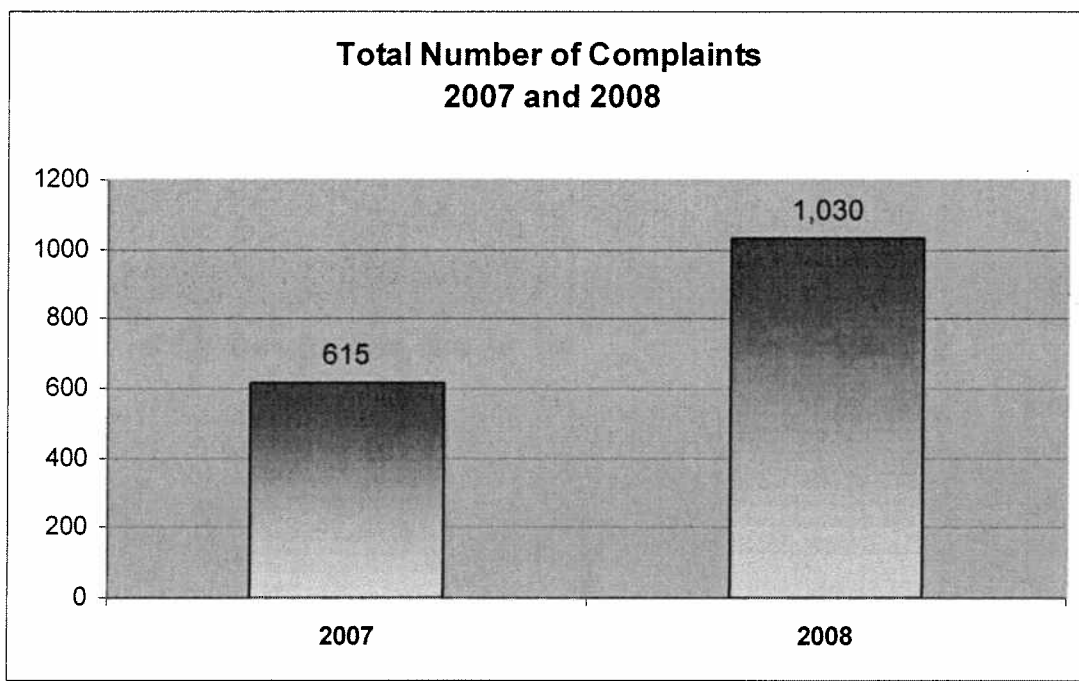


Figure 1  
Source: MPSC Complaint Data

The increase in complaints can be attributable to better public awareness, as well as communities and organizations referring their citizens and members to the Commission. In addition, another factor that may have contributed to the increase is the fact that the Commission received complaints for a full year in 2008, whereas the Commission only had a partial year after

that Act became effective in 2007. The 1,030 complaints taken by the Commission do not include complaints where customers were not willing to provide their name and contact information.

As previously stated, the Commission assisted video/cable customers with a number of issues. While most of the complaint categories are self-explanatory, there are two categories that need clarification. First, in the early part of 2008, the Commission received numerous complaints from residents in the Fenton and Linden area regarding their Charter service. Customers in this area were experiencing pixelized problems with their channel images. Second, the Commission received numerous complaints from customers about their channel line-up. Several customers who subscribe to analog service were upset that their providers are removing channels from their analog tier, and placing those channels on the digital tier. Figure 2 provides a listing of the top four most common types of video/cable filed complaints filed with the Commission:

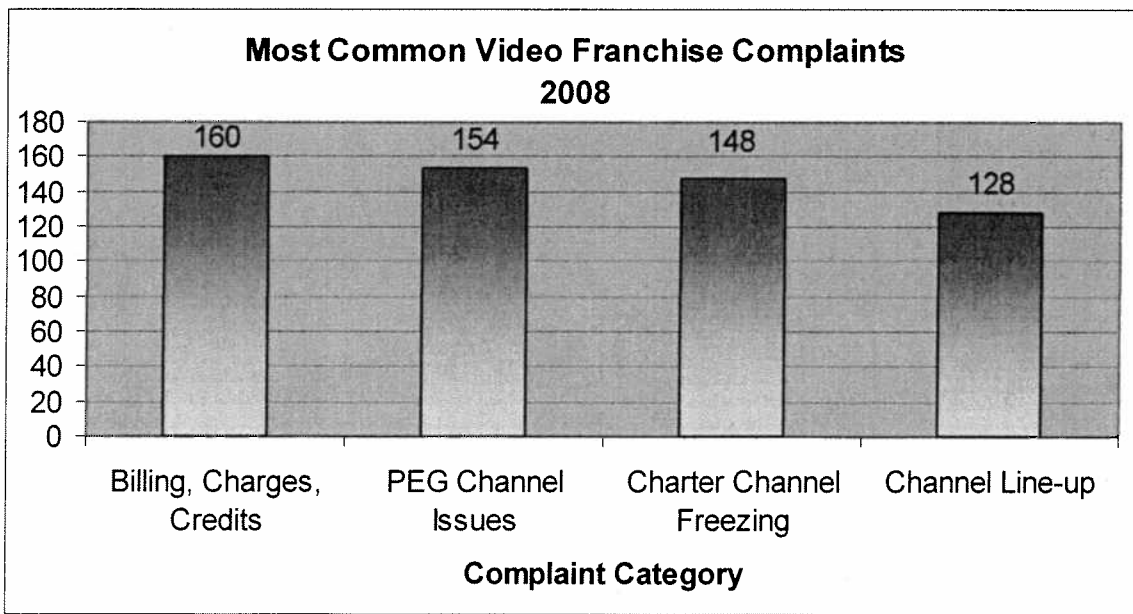


Figure 2  
Source: MPSC Complaint Data

The Commission received video/cable complaints from customers of numerous providers. In comparison to the previous year, Comcast and Charter continue to remain the top two companies with the most customer complaints filed with the Commission. Both of these companies have the largest number of customers in Michigan. AT&T was third in the number of complaints filed with the Commission. AT&T began offering the AT&T U-verse television service in Michigan's communities in the spring of 2007. The top three providers in 2008 with the most customer complaints filed with the Commission are found in Figure 3 below:

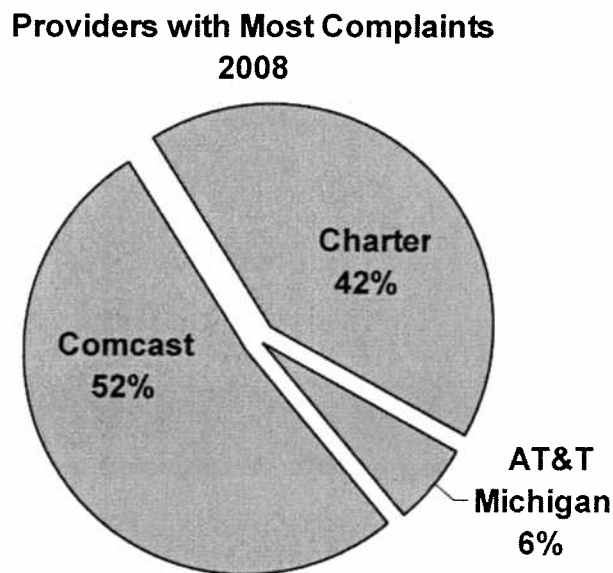


Figure 3  
Source: MPSC Complaint Data

### 3. Formal Complaints

Despite legislative inaction on SB 637 and HB 5048, franchise entities and providers continue to file formal complaints with the Commission. During 2008, the Commission received two additional formal complaints: *AT&T Michigan v The City of Clawson*, Case No. U-15683 and the *City of Rogers City v Charter Communications*, Case No. U-15527.

Since the video franchise law was enacted in 2007, the Commission has received nine formal complaints<sup>8</sup> between franchise entities and providers. Of these, four complaints<sup>9</sup> remain pending, while the other five complaints were either withdrawn by the complainant or found to not meet prima facie criteria. The following is a list of the currently pending formal complaints:

#### **Currently Pending Formal Complaints**

Case No.	Parties Involved	Date Filed	Number of Days Open
U-15329	City of Detroit vs. Comcast	6/19/07	593
U-15427	City of Adrian vs. Comcast	9/20/07	500
U-15439	City of Romulus vs. Comcast	10/19/07	471
U-15683	AT&T Michigan vs. City of Clawson	10/24/08	100

Of these formal complaints, most involve disputes regarding franchise fees and PEG fees. Many franchise entities budgets depend on receiving these fees, especially in times of economic hardship.

## **II. 2008 Commission Survey to Franchise Entities and Providers**

Similar to the previous year, the Commission developed a survey to be completed by franchise entities, as well as a survey to be completed by providers. Both surveys were titled the “Status of Competition for Video Services in Michigan,” and they were specific to each party (franchise entities and providers). This section is divided into two categories: “Franchise Entities’ Responses to the Commission’s Survey” and “Providers’ Responses to the Commission’s Survey.” Information that was collected via the surveys is summarized in each of these two categories.

<sup>8</sup> The following formal complaints have been filed at the Commission: U-15268, U-15273, U-15281, U-15329, U-15366, U-15427, U-15439, U-15527, and U-15683. Information regarding these complaints can be located on the Commission’s Web site using the following link: <http://efile.mpsc.cis.state.mi.us/efile/index.htm>

<sup>9</sup> While the Commission has attempted to resolve these complaints informally, the complaint process has stalled due to inaction by the Legislature on the dispute resolution process.

## **A. Franchise Entities' Responses to the Commission Survey**

In order to improve the efficiency of the survey and obtain a greater response from municipalities from all across Michigan, the Commission created an online survey that was available from November 13 – December 2, 2008. Letters were sent to over 1,700 municipalities throughout Michigan, making them aware of the location and availability of the survey, and also encouraged the communities to respond to the survey. Of the more than 1,700 municipalities that the surveys were sent to, 373 communities responded. The following information provides insight as to what is occurring in some communities throughout Michigan in regard to cable/video service and competition. Essentially, the responses are itemized into five main categories: Provider Information, Complaints, Impact of the Video Franchise Act on Communities, Changes in Quality of Service and/or Service Offerings of Providers, and the Franchise Entities' Suggestions for Legislative Changes. The following information comes solely from the communities' responses. While the Commission believes that it is important to share this information with the Legislature, the responses do not necessarily reflect the opinion of the Commission.

### **1. Provider Information**

Prior to 2006 PA 480 taking effect on January 1, 2007, the respondents indicated that they had the following number of providers offering video/cable service in their area:

<b>Number of Providers</b>	<b>Number of Communities</b>
0	30
1	285
2	55
3	3



Since the video franchise Act took effect, 125 municipalities had one new provider file for a franchise Agreement in their community. In addition, there were five municipalities that indicated they had at least two new providers file for a franchise Agreement, and there was one municipality that had three new providers file for a franchise Agreement. In 2008, municipalities have indicated a slight increase (since the Act took effect) in the number of providers currently offering television services in their community. According to the municipalities, the total video/cable providers that currently offer service in their community is indicated on the following chart:

Number of Providers	Number of Communities
0	29
1	243
2	71
3	29
4	1

While the number of providers in municipalities has not increased dramatically since the Act took effect, the responses show a slight increase in municipalities seeing growth in video/cable competition since the Act took effect on January 1, 2007.

## 2. Complaints

Of those municipalities that responded to the survey regarding customer complaints, 55% indicated that they no longer take video/cable complaints in their offices. The number of complaints filed (in 2008) with municipalities that do take complaints is a very low number, so it would appear that the Commission is receiving the majority of the complaints. However, approval of the dispute resolution process could ensure that the Commission receives all video complaints in the future.

In addition, the most frequent complaints being received by municipalities are as follows (from most to least):

1. Rates
2. Customer Service
2. Service/Equipment Problems & Outages<sup>10</sup>
4. Other
5. Billing

In regard to informal or formal disputes regarding municipalities' franchise Agreements that have been filed with the video/cable providers, 92% of respondents indicated that they have not had any form of dispute with their provider. Of those municipalities that have had a dispute, 37% have contacted the Commission regarding the dispute. The top three reasons for disputes were issues regarding: 1) PEG fees, 2) Franchise fees, and 3) Issues concerning possible PEG channel relocation/moving PEG to a digital tier.

### **3. Impact of the Video Franchise Act on Communities**

Communities were surveyed as to the impacts that they have witnessed within their communities since the Act took effect. The impacts that were evaluated are: Video/Cable Competition, Franchise Fee Payments, PEG Fee Payments, Video/Cable Complaints, and Other (an open ended topic for communities to respond to). The communities provided the following information in Figure 4<sup>11</sup>:

---

<sup>10</sup> Customer Service and Service/Equipment Problems & Outages were tied for the second most frequent type of complaint.

<sup>11</sup> It should be noted that while communities indicated earlier in the survey that they saw new video/cable providers file for a franchise Agreement, not all of these communities reported an increase in video/cable competition.

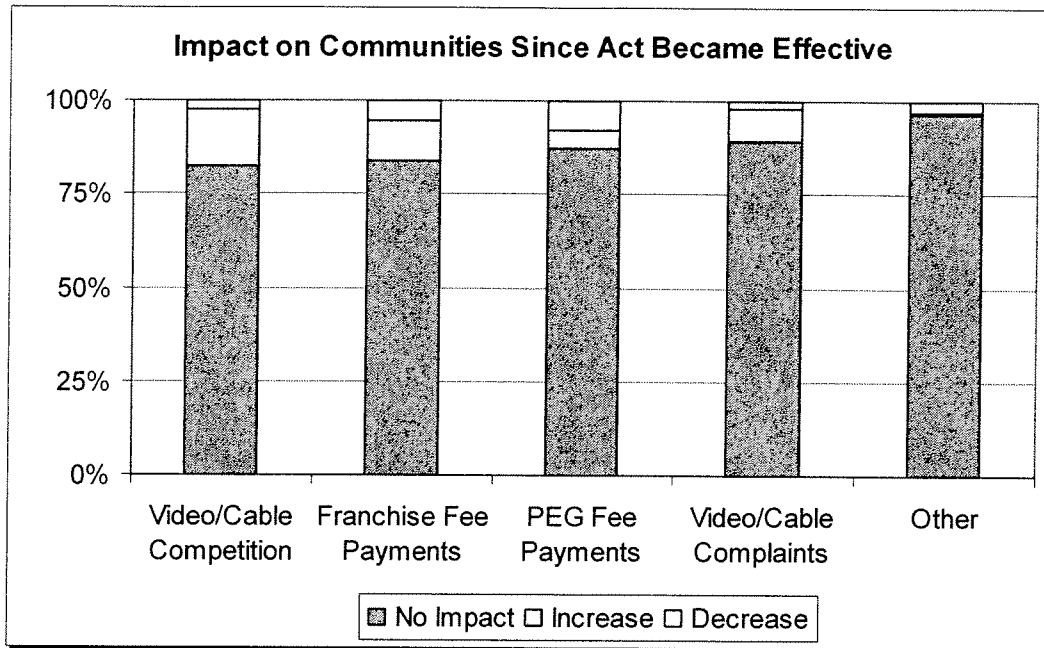


Figure 4  
Source: MPSC Franchise Entity Survey

#### 4. Changes in Quality of Service and/or Service Offerings of Providers

Municipalities reported on any changes occurring in their communities in regard to: Customer Service Quality, PEG Studio and Equipment, Service Offered by the Provider, and the Number of Customer Service Centers. Figure 5 below reflects those responses from the municipalities:

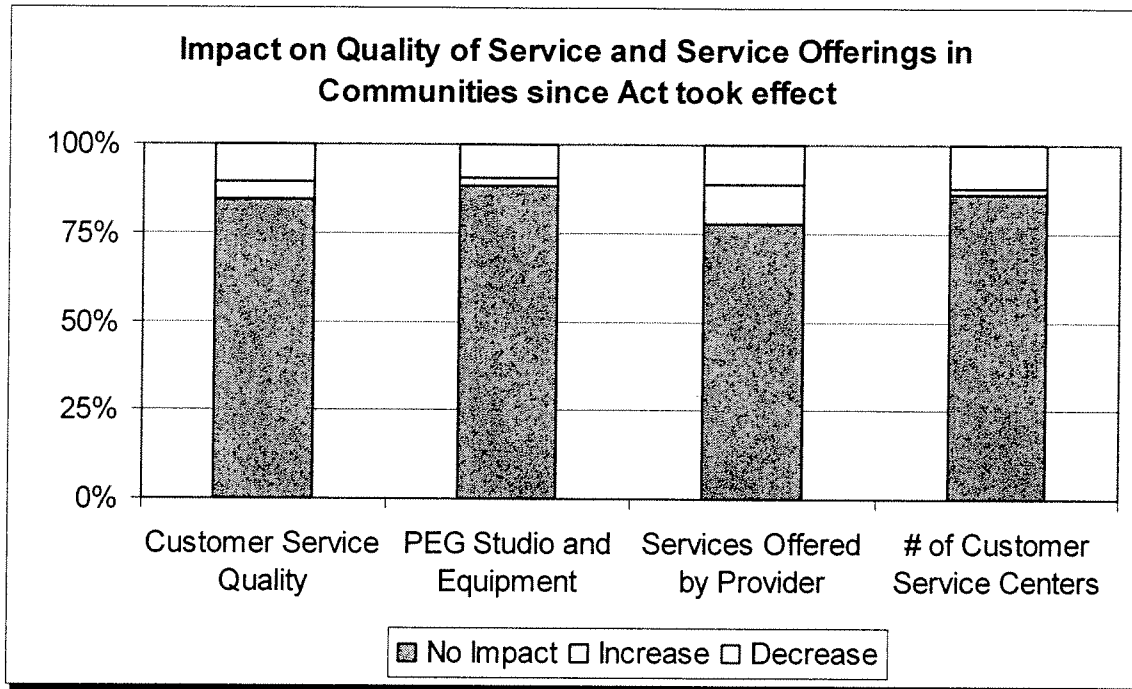


Figure 5  
Source: MPSC Franchise Entity Survey

Overall, the vast majority of respondents have not seen any evident changes in the quality of service and/or service offerings in their communities since the Act took effect.

## 5. Franchise Entities' Suggestions for Legislative Changes

Municipalities were provided the opportunity to offer any recommendations/suggestions that they may have for changing the Act. The municipalities' comments are categorized as follows:

- Changes with PEG
  - Ensure PEG Quality (equal to local broadcasters)
  - Include specific language regarding PEG channel placement (keep on basic tier)
  - Require new providers to display PEG channels similar to existing cable providers
  - Ensure 2% PEG fees for all communities, as well as clarify the current language (Pass HB 5047)
  - Prevent the closure of PEG studios, and require providers to provide updated PEG equipment to communities

- Requirements for Providers
  - Provide free services to local municipal offices
  - Require providers to service entire communities (not just parts), as well as require service in rural communities
  - Prevent the closing of local provider offices
  - Require providers to provide status reports, as well as franchise fee payment reports
  - Require providers to display the MPSC's contact information on customer's billing statements
- Repeal the Act and return control and authority back to the local governments
- Create customer service standards (with penalties associated)
- Increase the MPSC's role
  - Allow more regulatory authority
  - Allow the MPSC to oversee rates
- Pass the existing amendments, including the dispute resolution process
- Do not make any changes to the Act, as it is too early and providers must be allowed to build-out and make costly upgrades to their system

## **B. Providers' Responses to the Commission Survey**

The Commission also sent out a survey to the providers. This survey was mailed to the 39 providers that are providing video/cable service to Michigan's citizens. The survey was mailed on December 1, and the letter and survey were also included on the Commission's Web site.<sup>12</sup>

During 2008, Michigan had 2,322,471<sup>13</sup> video/cable customers. This is a net increase of 50,319 video/cable customers over 2007. The providers estimated<sup>14</sup> that by December 31, 2008, there would be approximately 2,303,302 video/cable customers in Michigan. Even with the lower estimated figure, there still would be a net increase of 31,150 video/cable customers in Michigan when compared to the previous year. The top three companies providing video/cable

---

<sup>12</sup> <http://www.michigan.gov/mpsc/0,1607,7-159-49641---,00.html>

<sup>13</sup> This number does not include satellite providers. Since satellite providers are not required to have franchise agreements with franchise entities, it is not known how many consumers in Michigan use satellite providers.

<sup>14</sup> Due to limited time constraints, the Commission asked the providers (via the survey) to provide both the actual number of customers that they serviced throughout 2008, as well as the estimated number of customers that they would have on December 31, 2008.

service in Michigan remain the same as the previous year: Comcast, Charter Communications, and Wideopenwest Michigan (WOW). While there were three new providers reported in 2007, there were no new providers reported for 2008.

While overall there was a net increase of video/cable customers in 2008, several providers reported a decrease in their number of customers since 2006 PA 480 took effect.

Figure 6<sup>15</sup> shows the customer impact on providers since the Act took effect.

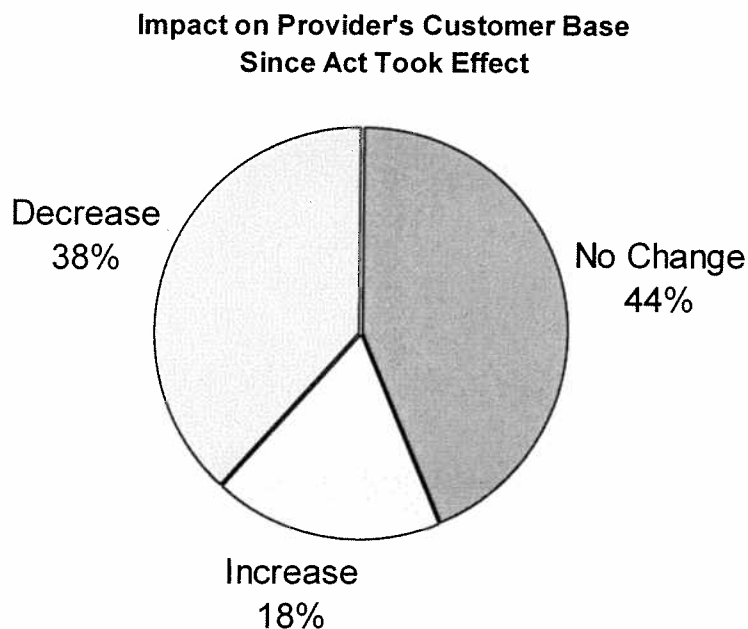


Figure 6  
Source: MPSC Provider Survey

In order to gain a better understanding as to the competition that providers are encountering in their franchise areas, providers were asked to provide the type of competition that they encountered in their franchise areas before the Act took effect, and then since the Act took effect. Figure 7 shows this comparison:

---

<sup>15</sup> While it is very important to understand the changes in customers among providers, it is inconclusive to attribute any decrease in customers solely to the Act. Some providers are reporting the loss of customers due to the current economic hardship, as well as the entry of new providers. A decrease could also be attributable to customers switching to satellite services. In some areas of Michigan, customers now have a choice of different video/cable providers, and they may be leaving one provider for another.

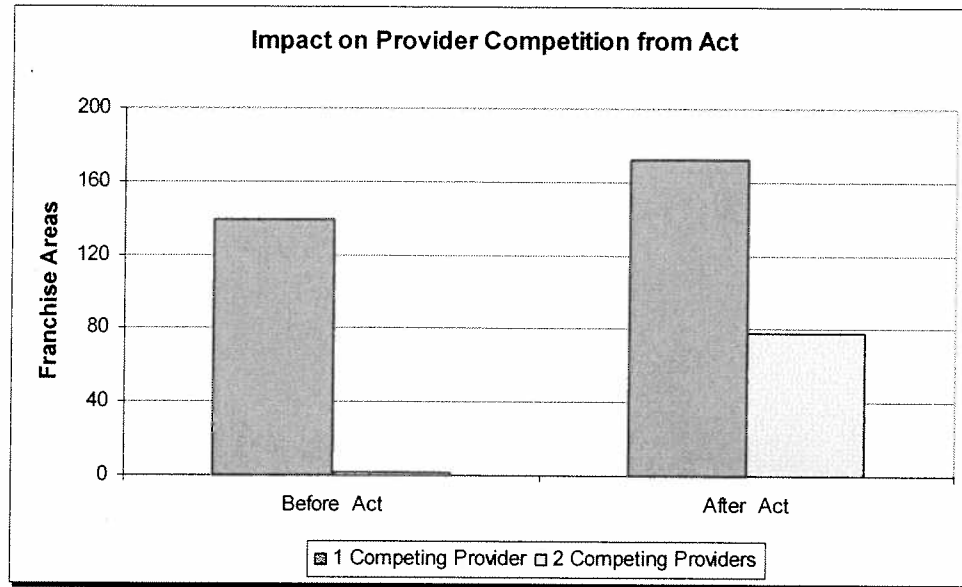


Figure 7  
Source: MPSC Provider Survey

Overall, there are currently 1,885 franchise agreements (includes both individual franchise agreements that were entered into before the Act that have not expired yet, as well as the Uniform Video Service Local Franchise Agreements as required by the Act) existing throughout Michigan. When compared to last year, there is a net increase of 74 franchise agreements. Of the 1,885 currently existing franchise agreements, 806 are now classified as the Uniform Video Service Local Franchise Agreement, an increase of 323 from the previous year.

Only eight of the 39 providers reported having an informal or formal dispute regarding the Uniform Video Service Local Franchise Agreement. A total of 40 franchise communities were involved in those disputes. The types of disputes that providers encountered involved:

- Franchise Fees
- PEG Fees
- Completeness of the Agreement
- PEG Interconnection
- Rejection of the Agreement
- Attachment 3 submission

Lastly, providers were given the opportunity to offer recommendations/suggestions that they may have for changing the Act to improve the efficiency of its implementation. Of the 38 providers that responded to the Commission's survey, only four had suggestions for possibly making a change to the Act. Those suggestions are:

- Clarify the responsible party for interconnection of PEG
- Provide an explicit statement that no local authority can object to the issuance of a franchise agreement
- Eliminate Forms and Fees
- Repeal the Act

### **III. FCC - Digital Television (DTV) Transition**

As an area that is somewhat related to the video franchise area of the Commission, this report offers a synopsis of the DTV transition. The Commission anticipates receiving additional inquiries regarding this area.

The Digital Television Transition and Public Safety Act of 2005 mandated that on February 17, 2009 all full-power broadcast television stations in the United States will stop broadcasting on analog airwaves and begin broadcasting only in digital.<sup>16</sup> The DTV transition will benefit consumers by providing improved television picture and sound quality with potentially new programming choices. Another important benefit of the switch to all-digital broadcasting is that it will free up parts of the valuable broadcast spectrum for public safety communications (such as police, fire departments, and rescue squads). Also, some of the spectrum will be auctioned to companies that will be able to provide consumers with more advanced wireless (such as wireless broadband).<sup>17</sup>

---

<sup>16</sup> [www.dtv.gov/DTVEducationPlan.pdf](http://www.dtv.gov/DTVEducationPlan.pdf) (p. 2)

<sup>17</sup> [www.dtv.gov/consumercorner.html#faq2](http://www.dtv.gov/consumercorner.html#faq2)



The FCC has been reaching out to consumers to alert them of the upcoming DTV transition and to inform them about the steps they will have to take. The FCC set up a DTV Education and Awareness Campaign including public service announcements distributed nationwide to full-power television and radio stations, and billboards expected to be placed on highway signs, buses, and subways in the nation's largest metropolitan areas. The FCC has identified target television markets for specific DTV outreach and at each stop there will be public events also available to local press such as town hall meetings, workshops, or roundtable with an FCC Commissioner and staff. The FCC is scheduled to visit the following cities in Michigan prior to February 17, 2009: Detroit, Grand Rapids-Kalamazoo-Battle Creek, and Lansing.

Ultimately, the consumer education and outreach efforts conducted by the FCC will touch the majority of U.S. consumers. However, the FCC places emphasis on consumers who receive their television signals over-the-air (OTA) and on those who are hard to reach and may be unaware of the upcoming digital transition, including: a) senior citizens; b) non-English speaking and minority communities; c) people with disabilities; d) low-income individuals; and e) people living in rural and tribal areas.<sup>18</sup>

To help consumers with the DTV transition, The National Telecommunications and Information Administration (NTIA) administered the Digital-to-Analog Converter Box Coupon Program established by the Government. Every U.S. household is eligible to receive two coupons, worth \$40 each, toward the one-time purchase of eligible digital-to-analog converter

---

<sup>18</sup> [www.dtv.gov/DTVEducationPlan.pdf](http://www.dtv.gov/DTVEducationPlan.pdf) (p. 4)

boxes ranging in price from \$40 to \$70 each. The FCC offers assistance online at [www.dtv2009.gov](http://www.dtv2009.gov) or by calling 1-800-388-2009 (voice) or 1-877-530-2634. The Commission has been and will continue to offer as much assistance as possible to Michigan's citizens.

#### **IV. 2008 Activity for Legislative Amendments**

At the end of 2008, seven video franchise related bills were left pending in both the House and Senate. The following is a listing of the pending bills, dates to which the bills were introduced, and a brief general description of the bills:

Bill No.	Date Introduced	General Topic
SB 636	7/17/07	PEG Fee Clarification
SB 637	7/17/07	Dispute Resolution Process
HB 5047	7/24/07	PEG Fee Clarification
HB 5048	7/24/07	Dispute Resolution Process
HB 5667	1/24/08	PEG Availability
HB 5693	2/6/08	PEG Visual and Audio Quality
SB 1235	3/26/08	PEG Visual and Audio Quality

#### **V. Conclusion**

In conclusion, the Commission, adhering to its responsibilities as set forth in Section 12(2) of the Act, provides the Legislature and Governor with valuable information that ranges from the Commission's role, activities, and responsibilities, to summarizing the information that has been received from franchise entities and providers, legislative activity, and lastly the Commission's recommendations.

It is expected that complaints will continue to increase as new providers continue to build-out systems and as competition continues to grow. The Commission once again urges the Legislature to adopt its Proposed Dispute Resolution Process. The Commission will continue to

strengthen its outreach to the public, franchise entities, and providers and make the necessary and appropriate changes to better inform and serve the public.

The information that has been received by both franchise entities and providers indicated that video/cable competition is continuing its growth in Michigan. While it is unrealistic to assume that video/cable competition will occur instantaneously, it is evident that competition is continuing to grow and a larger number of communities are beginning to have a choice when it comes to a video/cable provider. The Commission will continue to monitor video service competition as it develops and take appropriate action as provided by the Act.

## **VI. Recommendations**

This section provides the Commission's recommendations for legislative action pursuant to Section 12 (2) of the Act. The Commission offers four areas for consideration.

First and foremost, the Commission implores the Legislature to adopt the proposed dispute resolution process that the Commission submitted to the Legislature on May 31, 2007. HB 5048 (introduced on 7/24/07) and SB 637 (introduced on 7/17/07) would have allowed for the approval of the dispute resolution process for PA 480. The Commission strongly recommends that the Legislature take immediate action to formally adopt this dispute resolution process. As stated in the previous year's report, approving this dispute process would help to better define the overall complaint process, and the Commission's role in that process. Similar to the previous year, there has been some concern expressed by different parties that the Commission does not have authority to handle complaints until a process is legislatively mandated. By adopting the Commission's proposed process, concerns should be eliminated. In addition, approving the dispute resolution process would help to rectify the customer complaint problems that the Commission has encountered with providers, as well as issues that have been

raised by franchise entities and providers. Lastly, it would provide an overall well-defined complaint process.

Secondly, another urgent matter concerns funding. Section 6(13) of the Act provides for the Commission to recover its actual costs in exercising its duties under the Act by an assessment on each video service provider doing business in Michigan. Section 6(13) states as follows:

The commission within 30 days after the enactment into law of any appropriation to it shall ascertain the amount of the appropriation attributable to the actual costs to the commission in exercising its duties under this act and shall be assessed against each video service provider doing business in this state. Each provider shall pay a portion of the total assessment in the same proportion that its number of subscribers for the preceding calendar year bears to the total number of video service subscribers in the state. The first assessment made under this act shall be based on the commission's estimated number of subscribers for each provider in the year that the appropriation is made. The total assessment under this subsection shall not exceed \$1,000,000.00 annually. This subsection does not apply after December 31, 2009.

Section 6(13) sunsets on December 31, 2009, and the Commission strongly recommends that the Legislature take quick action, and extend the sunset date found in Section 6(13). Not only is it imperative that the Legislature take prompt action by extending this date, but it is also essential that this function has adequate funding for the Commission to continue to carryout its responsibilities under this Act.

Third, the Commission recommends that the Legislature extend the due date of the Commission's Annual Report from February 1 of each year, to March 1 of each year. The current due date makes it difficult for respondents to provide timely and accurate year-end information to the Commission. This narrow timeline to receive information from respondents and thoroughly analyze that information so that the Commission can provide a report to the Legislature by February 1 forces the Commission to rely on estimates in some areas instead of actual numbers.

Finally, the Commission continues to recommend that language be added to the Act that directs video service providers doing business in Michigan to submit to the Commission the following contact information: 1) the name of the provider, 2) a description of the services provided, 3) the address and telephone number of the provider's principal office, 4) the address and telephone number of the provider's registered agent authorized to receive service in this state, and 5) any other information the Commission considers necessary. This contact information is required so that the Commission has accurate contact information available to it for complaints, as well as for future information and data collection. Also, if a company changes its name, goes out of business, or is merged into another company; require them to notify the Commission of this change as well. Providers do not submit their franchise Agreements with the Commission; instead the franchise Agreements continue to be submitted to the individual franchise entities and as such this information is not available to the Commission. The legislative language for this required information could be similar to the language that is currently found in Section 211(a) of 2005 PA 235, the Michigan Telecommunications Act.

The Commission will continue to monitor the status of video services competition in Michigan and inform the Legislature of any further recommendations for needed legislation.